In all fairness

2010 Annual Report of the Yukon Ombudsman

For some Yukoners who did not return a voluntary survey, the consequences only became clear when they visited their doctor or hospital, and found out they no longer had health care coverage.

A voluntary survey – with consequences

2010 Investigation:
Health and Social Services and Yukon Bureau of Statistics

Case Summaries: The best way to shed light on our work is to give examples of the work we've done in 2010. While some cases were resolved early, others required full investigations. Together, they demonstrate the kinds of results we can achieve – not just for individuals, but for the good of all Yukoners. The names of the individuals have been changed to protect confidentiality.

Jack was one of about 5,000 Yukoners who received a survey from the Yukon Bureau of Statistics (YBS) in the spring of 2010. While the survey was voluntary, an accompanying letter warned that health care insurance coverage could be cancelled for failing to return it.

The survey asked Jack to confirm or correct information about his address and the persons living in his home. The information collected was to be shared with Health and Social Services Insured Health Care Services (HSS). HSS wanted to update their records and confirm eligibility for health care insurance coverage.

Jack was worried – and confused. It looked like his health care coverage might be at risk if he didn't complete and return a voluntary survey. Jack didn't think this was fair so he came to our office.

Our investigation revealed that the *Statistics Act* does permit the Yukon government to undertake surveys jointly with departments. However, the survey did not meet the legal requirements of the Act in two important ways. First, the law requires that a data sharing agreement be in place between YBS and the department involved before information collected by one department can be shared with another. There was no such agreement in place. Second, the law requires that people who receive a survey be told that they can object to their personal information being shared with the department. This also was not done.

Of real concern was the statement that health care insurance coverage could be cancelled for those people who did not return the survey. Cancellation of health care insurance is not an available penalty for failing to respond to a voluntary survey according to the *Statistics Act*.

Unfortunately, some individuals who didn't return the survey *did* have their health care insurance coverage cancelled. They were not told about the cancellation. They would only learn about it the next time they went to a doctor or the hospital for an insured health care service.

We recommended that HSS immediately give written notice to anyone whose health coverage was cancelled for not returning the survey. People also needed to be told what was required to have their coverage restored. We recommended that coverage be made retroactive to the cancellation date for those who could show they were eligible.

Both recommendations were accepted by HSS.

Both YBS and HSS committed to ensuring that future surveys meet all the legal requirements of the *Statistics Act*. ■

Why does Yukon have an Ombudsman?

Our mission is to provide an independent, impartial means by which complaints about administrative decisions of Government of Yukon and its agencies can be heard and investigated with the goal of promoting fairness and accountability in public administration.

Every day, government makes decisions that affect people's lives, and when people believe a government decision, process or relationship with them has been unfair, they can contact us. The Yukon Ombudsman investigates complaints about Yukon government actions or decisions to see if they have been fair. If a complaint of unfairness is substantiated, the Ombudsman may make recommendations to address the unfairness. The result is the complainant's concern is addressed and a government department has made improvements to public service.

Our work is not about pointing fingers or laying blame. It is about listening, discovering facts, evaluating evidence, and coming to a conclusion. The office is a valuable resource for government and the public, providing an avenue for resolving issues which might otherwise result in protracted and expensive disputes.

The Ombudsman is an officer of the Legislative Assembly but is independent of government and political parties. The Ombudsman is impartial; she is neither an advocate for a complainant nor a defender of government actions.

All services of the Office of the Ombudsman are free and confidential.

Our team, from left to right:
Tracy-Anne McPhee, Veronique Herry-Saint Onge, Susan Donnelly, Catherine Buckler Lyon, Danielle Noel

My message to all Yukoners

The Ombudsman concept is over 200 years old but remains confusing or misunderstood by many. While I would like to think that all Yukoners know about my office, the truth is, they don't. If I could tell them just one thing it would be this:

I have a vision for a Yukon in which standards of fairness exist in relationships between government and individuals, for the good of all Yukoners. Simply put, my mission is to resolve disputes fairly between government and the individuals they serve.

That is the good news story that we have tried to deliver this year in an outreach program focused on building relationships with Yukoners who assist other Yukoners. A community visit to Dawson City put us in touch with local non-profit organizations, schools, businesses and health care providers. Presentations at a Rotary Club got the word out to the many men and women who serve our communities. Meetings with members of the Legislative Assembly ensured they had up-to-date information about our services and how we might assist their constituents.

In 2011 we will continue our work to raise awareness about our vision and mission, about the services we provide and the results we can achieve for all Yukoners. We will reach out to groups that assist vulnerable people such as youth, seniors or people with mental health issues. More community visits, a new website and plain language materials are also planned.

The government plans to review the *Ombudsman Act* in 2011 and I look forward to participating in that process.

Currently the Ombudsman/Information and Privacy Commissioner position is authorized as one half-time job. This limitation makes it difficult to carry out the responsibilities of these positions effectively. To ensure that Yukoners are well served by the office, I will continue to urge the government to make the position full-time.

Our office is staffed by three dedicated women who use their expertise and professionalism to assist me in finding solutions and fairness for Yukoners. For this, I thank them.

15th Annual Report

It is my honour and privilege to offer the people of the Yukon this 15th, and my fourth, *Annual Report of the Yukon Ombudsman*. It has been sent to the Honourable Ted Staffen, Speaker of the Yukon Legislative Assembly, who will present it to the Assembly as required by the *Ombudsman Act*.

Tracy-Anne McPhee
Ombudsman
Information and Privacy Commissioner

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A member of the tribunal wanted to be sure he was making the right decision after Roger's hearing and phoned one of Roger's relatives before making the decision.

Just trying to help (but it didn't)

2010 Investigation:
Workers' Compensation Appeal Tribunal

Roger had made a compensation claim to the Yukon Workers' Compensation Health and Safety Board. When it was denied, he appealed the decision to the Workers' Compensation Appeal Tribunal (WCAT). After the hearing had concluded, but before a final decision was made, a member of the tribunal telephoned a relative of Roger's.

The member told the other tribunal members of this conversation. But, he did not tell Roger or his representative. Eventually, WCAT upheld the decision of the Board to deny compensation.

Some time later, Roger learned about the conversation between the member and his relative. He contacted our office because he thought it was unfair that he wasn't told about the conversation.

We contacted the WCAT member. He confirmed he had a telephone conversation with a relative after the hearing. The member indicated that he wanted to be sure he was making the right decision and thought this person might have some information that would help.

The member didn't realize that his concern to 'get it right' did not justify searching outside of the hearing for evidence. We pointed out that procedural fairness requires that decisions must be based only on the evidence introduced during the hearing. By seeking evidence outside the hearing, the member's role as an impartial decision maker was compromised.

We recommended, and WCAT agreed, to rehear the matter before a different appeal panel. ■

What happened when the cheque wasn't in the mail

2010 Early Resolution:
Health and Social Services

Based on the promise that a cheque would be available on the 15th of the month, Joan made certain financial commitments that were due on the 15th.

Joan operates a licensed daycare. A licensed daycare receives a financial grant called the Direct Operating Grant (DOG) from Health and Social Services (HSS). The grant amount depends on the number of children attending the daycare. Cheques are issued quarterly on the 15th of the month provided the required paperwork is submitted to HSS by the 5th. HSS then sends the information to the Department of Finance who issues a cheque to the daycare operator for the amount of the DOG.

Joan submitted the required paperwork to HSS on time. On the 13th of the month she confirmed with HSS the amount of the DOG she would receive on the 15th. On the 15th Joan went to pick up the cheque. Joan was told that the cheque was not ready and she wouldn't get it for three or four days. Joan had done all that was necessary to ensure payment by the 15th. She was unable to get an explanation as to why the cheque was not available as promised.

What is fair?
The answers are found in the *Ombudsman Act*. To learn more visit us online at **www.ombudsman.yk.ca**

Concerned about the consequences of not meeting her financial commitment, she contacted our office for help. We contacted Finance who advised that HSS had not provided the information required to issue a cheque until late on the 15th, making it impossible to issue a cheque on that day. We talked to HSS who confirmed that Joan had provided the required information in time. HSS confirmed it had not sent the information to Finance in time for it to issue a cheque on the 15th. We suggested and HSS agreed to contact Joan's creditor and explain that it was their error that resulted in Joan being unable to meet her commitment and confirm when Joan would receive her cheque. ■

Bridging a costly communication gap

2010 Early Resolution:
Health and Social Services

John is a senior citizen who was receiving an income supplement from the Yukon government. One day it stopped and John had great difficulty getting it started again.

Each year John is required to file an income tax return in order to establish his continuing eligibility for the income supplement. Using the information in his tax return, the federal government (Service Canada) notifies Yukon Health and Social Services (HSS) of his eligibility for the income supplement. HSS then calculates the amount of the income supplement and pays it each month to John.

John was late filing his income tax return. Since HSS didn't have confirmation that he was eligible for the income supplement, it stopped the monthly payment.

When John did file his income tax return, Service Canada determined he was eligible for the income supplement dating back three months to when the payments were stopped. HSS reinstated the income supplement but refused to pay the previous three months. HSS told John that Service Canada said he was not eligible for those months.

John checked with Service Canada several times and each time he was told that their records showed he was eligible for the supplement for the months in question. John conveyed this information to HSS but was unable to convince them that he was entitled to those payments.

Frustrated, John came to us for help. We contacted Service Canada who confirmed that John was eligible for the three months in question. We then contacted HSS and determined steps had not been taken to verify the information with Service Canada. We asked them to do so.

When they did, they found that the information on their file was incorrect, and that John was in fact eligible for the three months of the income supplement. Once the information was corrected, HSS worked quickly to provide John with a cheque. ■

The *Wildlife Act* sets a 12-month residency requirement for a hunting license because the seasonal workforce was putting additional hunting pressure on locally stressed wildlife populations.

Fair doesn't always mean equal

2010 Early Resolution:
Environment

Ed recently moved to the Yukon. He is an avid hunter and was looking forward to the opening of hunting season. When he applied for a hunting license he learned that he wasn't considered a resident of the Yukon for the purposes of a hunting license until he had lived here for 12 months.

He could get a non-resident license but it cost more and had restrictions that don't apply to a resident hunter. He pointed out that he could get a driver's license or fishing license immediately upon moving here and he was considered a resident by the health care insurance program after just three months. Ed did not take issue with a residency requirement but he thought the 12-month requirement to get a resident hunting license was discriminatory.

We didn't agree. Many government programs benefit a particular group and are intended to do so. Differential treatment between residents and non-residents is not, in itself, a problem. It is only improper or offensive if government applies discriminatory criteria which are not necessary to meet the objectives of the program. The residency requirement for health care insurance, a driver's license or a fishing license will be determined on different criteria than a hunting license.

We learned that the *Wildlife Act* sets a 12-month residency requirement for a hunting license. The Act is aimed at the conservation and management of wildlife and the regulation of hunting. The decision to require 12 months of residency specifically addresses a concern that a very significant seasonal workforce was putting additional hunting pressure on locally stressed wildlife populations. We were satisfied that the 12-month residency requirement was consistent with the program objective—the conservation and management of wildlife populations and was not discriminatory. ■

Statistics

Complaints

In 2010, we received 208 complaints. Of those, 86 were within the *Ombudsman Act* jurisdiction; 80 were within the *Access to Information and Protection of Privacy Act* jurisdiction. We provided support and assistance on another 42 matters.

Community Outreach 2010

- Yukon College – Whitehorse and Dawson City
- Yukon Anti-poverty Coalition – Whitehorse Connects
- City of Whitehorse
- Dawson City Chamber of Commerce
- Robert Service School, Porter Creek High School, FH Collins High School, Vanier Catholic Secondary School
- Rotary Club of Whitehorse Rendezvous
- Dawson City Women's Shelter
- Member of Parliament Offices – Whitehorse and Dawson City
- Yukon Party Caucus, Yukon Liberal Party Caucus, Yukon New Democratic Party Caucus, Independent MLA Office
- Golden Age Society

Budget Summary

The budget summary below covers the operations of the Office of the Ombudsman and the Information and Privacy Commissioner for the period from April 1, 2010 to March 31, 2011.

Category	Expenditures
Personnel	$408,000
Office and Operations	$119,000
Supplies and Services	$5,000
Capital Items	$5,000
TOTAL	$537,000